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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 74-942

FRANK L. RIZZO, *et al.*,

Petitioners,

v.

GERALD G. GOODE, *et al.*,

Respondents.

JAMES H. J. TATE, *et al.*,

Petitioners,

v.

COUNCIL OF ORGANIZATIONS ON PHILADELPHIA POLICE ACCOUNTABILITY AND RESPONSIBILITY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

CONSENT TO FILING 1

INTEREST OF AMICUS CURIAE 2

STATUTE INVOLVED 2

QUESTION PRESENTED 3

STATEMENT OF FACTS 3

ARGUMENT:

The District Court's Order Was Based on Adequate Evidence and Is an Appropriate Form of Equitable Relief 7

A. The Evidence of Record Shows a Pattern of Police Misconduct for Which Petitioners Are Legally Responsible Under 42 U.S.C. §1983 7

1. Petitioners' Responsibility 8

2. Relief Against Petitioners 9

B. The Order of the District Court Is a Wholly Appropriate Remedy for the Violations Found 10

1. The Present Case Presents a Justiciable Controversy 11

2. Respondents Have No Adequate Remedy at Law 15

3. The District Court Was Justified in Ordering the Department to Improve its Handling of Citizens' Complaints 16

4. Petitioners' Objections to the Precise Form of the Trial Court's Decree Are Wholly Unsupported by Any Evidence of Record 19

CONCLUSION 21

TABLE OF AUTHORITIES

Page

Cases

Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970) 19

Alexander v. Rizzo, (E.D. Pa., C.A. No. 70-992) 6, 18

Allee v. Medrano, 416 U.S. 802 (1974) 9, 10, 12, 15, 18

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) 15

Dombrowski v. Pfister, 380 U.S. 479 (1965) 15

Doran v. Salem Inn, Inc., 43 U.S.L.W. 5039 (June 30, 1975) 14

General Motors Corp. v. Washington, 377 U.S. 436 (1964) 19

Gilligan v. Morgan, 413 U.S. 1 (1973) 12

Hague v. CIO, 307 U.S. 496 (1939) 9, 14, 15

Laird v. Tatum, 408 U.S. 1 (1972) 14

Lankford v. Gelston, 364 F.2d 197 (4th Cir. 1966) 12

Monroe v. Pape, 365 U.S. 167 (1961) 9, 10

O'Shea v. Littleton, 414 U.S. 488 (1974) 11, 13

Scheuer v. Rhodes, 416 U.S. 232 (1974) 15

Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969) 9, 11

Smith v. Ross, 482 F.2d 33 (6th Cir. 1973) 9

Steffel v. Thompson, 415 U.S. 452 (1974) 14

United States v. Spector, 343 U.S. 169 (1952) 19

Witherspoon v. Illinois, 391 U.S. 510 (1968) 19

Wood v. Strickland, 95 S. Ct. 992 (1975) 15

Wright v. McMann, 460 F.2d 126 (2d Cir.), *cert. denied*, 409 U.S. 885 (1972) 9

Younger v. Harris, 401 U.S. 37 (1971) 13

Page

Statutes:

Civil Rights Act of 1871, 42 U.S.C. §1983 ..... *passim*

Other Authorities:

American Bar Association, *Standards Relating to the Urban Police Function* (1973) 17

Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L.J. 143 (1968) 10

National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police, Model Standards for Police Internal Discipline* (1973) 17, 20

Note, *The Administration of Complaints by Civilians Against the Police*, 77 *Harv. L. Rev.* 499 (1964) 17

Note, *Developments in the Law–Injunctions*, 78 Harv. L. Rev. 994 (1965) 18

The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967) 17

The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (1967) 17

Ruchelman, *Models of Police Politics–New York City, Chicago, Philadelphia*, reprinted in L. Ruchelman, *Who Rules the Police?* (1973) 8

Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. Pa. L. Rev. 1023 (1970) 9

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CONSENT TO FILING

This amicus brief is filed, pursuant to Supreme Court Rule 42(2), with the written consent of all parties to the case.

INTEREST OF AMICUS CURIAE

The Lawyers' Committee for Civil Rights Under Law was organized on June 21, 1963, following a conference of lawyers called at the White House by the President of the United States. The Lawyers' Committee is a non-profit private corporation whose principal purpose is to involve private lawyers throughout the country in the struggle to assure all citizens of their civil rights through the legal process. The Committee includes three former Attorneys General, two former Solicitors General, thirteen past presidents of the American Bar Association, a number of law school deans, and many of the nation's leading lawyers.

The Lawyers' Committee and its local committees, affiliates, and volunteer lawyers have been actively engaged in providing legal representation to those seeking relief under federal and state civil rights legislation and the Reconstruction Amendments to the Constitution. As part of these efforts, the Lawyers' Committee is particularly concerned with ensuring that institutions of government at every level in the United States are responsive to the need to protect and preserve the constitutional rights of individual citizens. Because the lower courts in this case properly enforced the constitutional requirement that police not violate the rights of citizens and entered an order which will not interfere with the legitimate operations of the police, the Lawyers' Committee files this amicus brief to urge that the decision be affirmed.

STATUTE INVOLVED

The Civil Rights Act of 1871, 42 U.S.C. §1983, provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

QUESTION PRESENTED

On the basis of the evidence presented to them, were the lower courts in this case justified in concluding that the Philadelphia Police Department has been engaged in a pattern of violations of the constitutional rights of citizens, due in substantial part to inadequate supervision by superior officials of the conduct of police officers, and that the least intrusive potentially effective remedy for this pattern of unconstitutional action is to require the Police Department to set up an adequate internal system of handling citizens' complaints about misconduct by individual police officers?

STATEMENT OF FACTS

The full factual background of the case is set out in the opinions of the courts below[1] and in the Brief for Respondents. In brief, the facts are as follows:

Two separate civil rights class actions were brought in 1970 by groups of unrelated plaintiffs against officials of the City of Philadelphia, including the Mayor, the Commissioner of Police and various other high-ranking

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[1]The opinion of the District Court is reported at 357 F. Supp. 1289 and is reproduced beginning at page 65a of the Appendix (hereinafter cited as App.). The opinion of the Court of Appeals is reported at 506 F.2d 542 and is reproduced beginning at page 4a of the Appendix to the Petition for Certiorari (hereinafter cited as App. Pet. Cert.).

police officials, claiming widespread violations of the constitutional rights of Philadelphia citizens by members of the Philadelphia Police Department. The two actions were ultimately consolidated for disposition by the District Court, and, accordingly, were treated as a single litigation by the Court of Appeals.

At trial, the plaintiffs presented evidence of approximately 40 specific instances of alleged police misconduct. The trial judge entered extensive findings of fact with respect to each incident. With respect to the incidents presented in *Goode,* the trial judge found at least seven instances of misconduct by the police toward these plaintiffs (principally involving one officer DeFazio) consisting of illegal arrests (Shaw, Goode), unnecessary force (Shaw, Goode, Brown, Sisco and Reas), racial slurs (Brown, Reed) and antisemitic remarks. The trial judge further found that, despite the numerous justifiable complaints relating to DeFazio's conduct, his superiors never meaningfully disciplined him,[2] no records were kept of the complaints, and DeFazio's repeated record of misconduct and the complaints thereof had no effect upon DeFazio's official fitness ratings.[3]

With respect to the 28 incidents in *COPPAR*, the trial judge described in detail the conduct of the police and found that the evidence showed "widespread" violations of citizens' legal and constitutional rights, principally:

(1) arrests "for investigation";

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[2]DeFazio's two short suspensions were both with pay, *i.e.*, unscheduled vacations.

[3]In fact, as the number of instances of misconduct increased, DeFazio's official rating improved.

(2) mistreatment—including both unlawful arrests and beatings—of citizens who question the propriety of police conduct in specific cases;

(3) improper charges of resisting arrest when the arrest was unlawful to begin with; and

(4) extreme overreaction, frequently including use of unnecessary force and assaults and beatings of civilians, in connection with actual or reported assaults on police.

The trial court concluded that this repeated misconduct was the natural and foreseeable result of the institutional failure of the Department to supervise police officers' conduct or to discipline or otherwise control officers who act unlawfully or unconstitutionally. Thus, the court found that where police officers act unlawfully "little or nothing is done [by the Department] to punish such infractions, or to prevent their recurrence." (App. at 126a, 357 F. Supp. at 1319). The court also found that it is "the policy of the department . . . to avoid or minimize the consequences of proven police misconduct . . . ." (App. at 124a, 357 F. Supp. at 1318).

In this regard, the court found that the Department fails to maintain adequate records of incidents of misconduct (particularly ones involving racial bias) in connection with performance ratings of individual officers, and that it is "the policy of the department to discourage the filing of such [citizens'] complaints . . . and to resist disclosure of the final disposition of such complaints." (App. at 124a, 357 F. Supp. at 1318). As a result of its refusal to maintain records or process complaints, the Department has no method of identifying officers who engage in conduct of the type found by the court to be unlawful. Thus, the Department is in no position to evaluate or supervise those officers.

The trial court determined, therefore, that the plaintiffs had made a sufficient showing of unconstitutional conduct by the Department to warrant some form of relief under 42 U.S.C. §1983.

The court next dealt with various forms of relief proposed by the plaintiffs. After carefully considering both the need to protect the plaintiffs' constitutional rights and the necessity to avoid undue interference with the workings of the Philadelphia Police Department, the trial court rejected the *COPPAR* plaintiffs' request for the appointment of a receiver for the Department. The court also determined that detailed injunctive relief was unnecessary since many of the abuses in this case might well be resolved by a consent injunction entered into by the same defendants in another case involving similar issues, *Alexander v. Rizzo*, (E.D. Pa., C.A. No. 70-992).

The court found that a sufficient remedy for most of the abuses not covered by the *Alexander* decree would be the institution by the Police Department of a procedure for handling and maintaining records of citizens' complaints against individual police officers. The trial judge further determined that such a remedy would be the least intrusive feasible mechanism which could provide relief of the sort to which plaintiffs were entitled. Accordingly, he directed the parties to prepare and submit a proposed form of order setting up a program for police handling of citizens' complaints of police misconduct. After the parties were unable to agree on an appropriate form of order, the judge ultimately entered an order (App. Pet. Cert. 20a) setting forth detailed procedures for the handling of citizens' complaints by the Philadelphia Police Department.[4] As entered, the decree tracked the

[4]The trial court retained jurisdiction to modify the procedures upon application of any party in interest.

Department's proposal in a number of major respects as to the allocation of responsibility for maintaining and processing such complaints.

The defendants then appealed to the Court of Appeals for the Third Circuit, which affirmed the judgment of the District Court. The Court of Appeals held, *inter alia*, that there was adequate evidence to support the District Court's findings of a pattern of police misconduct in violation of 42 U.S.C. §1983; that the pattern of misconduct was sufficiently substantial to warrant the granting of relief; and that the order entered by the District Court was an appropriate form of relief for the constitutional violations found.

ARGUMENT

THE DISTRICT COURT'S ORDER WAS BASED ON ADEQUATE EVIDENCE AND IS AN APPROPRIATE FORM OF EQUITABLE RELIEF.

A. The Evidence of Record Shows a Pattern of Tolerance of Police Misconduct for Which Petitioners Are Legally Responsible Under 42 U.S.C. §1983.

Although the petitioners have never contested the specific findings of police misconduct in this case and although their Brief purports to be limited to the propriety of the District Court's order, Amicus feels compelled to address at the outset what appear to be suggestions woven into the petitioners' other arguments that there were no findings below of participation by them in the constitutional violations and that, therefore, the entry of any relief under 42 U.S.C. §1983 was improper. Petitioners' contentions in this regard both misstate the lower courts' findings and miscomprehend the law.

1. *Petitioners' Responsibility.* As the petitioners assert throughout their Brief, they are the officials charged by law with the supervision and control of the Philadelphia Police Department,[5] an organization having almost 7,500 individual police officers at the dates involved in this case.[6] The day-to-day conduct of those officers on the job will inevitably reflect their perception of the desires and expectations of their superiors. Indeed, as the commentators have uniformly observed, a police department is substantially more hierarchical in its organization (resembling in this regard the military) than most other governmental and private organizations.[7] Under these circumstances, it hardly needs elaborating to say that the expectations of a superior may be communicated by indirect and tacit means as well as by direct and explicit ones.

The trial court specifically found, on abundant evidence, that a principal cause of the instances of police misconduct presented in this case was the failure of superior officers of the Philadelphia Police Department (including the Commissioner and Deputy Commissioner of Police) and their civilian superiors (the Mayor and the City's Managing Director)—the petitioners in this case—to control and supervise the conduct of individual members of the Police Department. In particular, the District Court found that the Police Department's systematic failure to keep records of citizens' complaints; dis-

[5]See also the provisions of the Philadelphia Home Rule Charter, cited at pages 4-5 of petitioners' Brief.

[6]The precise figure was 7,439 officers in 1969. See Ruchelman, *Models of Police Politics—New York City, Chicago, Philadelphia*, reprinted in L. Ruchelman, *Who Rules the Police?*, at 254 (1973) (hereinafter cited as Ruchelman).

[7]*See, e.g.*, Ruchelman, *supra* at 249.

couragement of the filing of complaints by citizens against policemen; failure to investigate complaints; and failure to discipline adequately policemen as to whom citizens' complaints have been shown valid,[8] all operated to encourage or acquiesce in a pattern of misconduct by some police officers. The Court of Appeals affirmed these findings of the District Court.

Under these circumstances, the petitioners can hardly dispute that they are indeed responsible for the policies of the Department, and that these policies are responsible for the pattern of unconstitutional police activity found to exist by the lower courts.

2. *Relief Against Petitioners.* As a legal matter, the propriety of an injunction against a police department for unconstitutional action of its officers due to the failure of superiors to exercise proper supervision and control was settled by this Court in *Allee v. Medrano*, 416 U.S. 802 (1974) (injunction against Texas Rangers proper where officers violate constitutional rights of citizens).[9] See also *Monroe v. Pape*, 365 U.S. 167 (1961); *Hague v. CIO*, 307 U.S. 496 (1939).

Furthermore, it is particularly compelling to regard the toleration of constitutional violations by superior police officials as calling for relief under 42 U.S.C. §1983 because it is clear that one of the principal reasons for the enactment of Section 1983 was the toleration by state

[8]See also Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. Pa. L. Rev. 1023 (1970).

[9]Ten courts of appeals had previously reached the same result. *E.g., Smith v. Ross*, 482 F.2d 33 (6th Cir. 1973); *Wright v. McMann*, 460 F.2d 126 (2d Cir.), *cert. denied*, 409 U.S. 885 (1972); *Schnell v. City of Chicago*, 407 F.2d 1084 (7th Cir. 1969).

officials after the Civil War of abuses of the constitutional rights of blacks. See *Monroe v. Pape, supra,* 365 U.S. at 174-77. Indeed, ever the dissenters in *Allee v. Medrano, supra,* 416 U.S. at 858 n.20, cited with approval a law review article[10] which made the point that the critical feature of many police conduct cases was the *toleration* of misconduct by superior officers, not their direct participation therein.

Accordingly, on the evidence of record, the lower courts were amply justified in finding a violation of 42 U.S.C. §1983 in the petitioners' systematic failure to control misconduct by their subordinates in the Philadelphia Police Department, at least insofar as the propriety of equitable relief directed at them is concerned.

B. The Order of the District Court Is a Wholly Appropriate Remedy for the Violations Found.

In our view, the District Court's order, as affirmed by the Court of Appeals, is a model of restraint. The courts below, having found a pattern of violation of constitutional rights by the Philadelphia Police Department, fashioned an order which was specifically tailored to the particular violations and was designed to be as unintrusive as possible on the legitimate workings of the Department. The petitioners now make a number of arguments in support of their contentions that the entry of any injunctive relief at all, and of the type of injunctive relief chosen by the courts below in particular, was improper. We deal with these contentions *seriatim* below.

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[10]Comment, *The Federal Injunction as a Remedy for Unconstitutional Police Conduct*, 78 Yale L.J. 143 (1968).

1. The Present Case Presents a Justiciable Controversy.

Without precisely saying so, petitioners appear to be claiming that the present case does not present a justiciable controversy because the lower courts did not hold that the Department's complaint review procedure was in and of itself unconstitutional. Petitioners contend that the lower courts have improperly entered a judgment against them based upon a consideration of the "wisdom, need, desirability or appropriateness" of the Department's regulations and that courts have no power to inquire into such matters. Pet. Br. 18-19.

Petitioners' claims in this regard are plainly incorrect because they have confused the wrong (unconstitutional Department action) with the remedy adopted to cure it.[11] It goes without saying that a person seeking injunctive relief under 42 U.S.C. §1983 need not allege or show that he has a constitutional right to a particular type of relief to present a justiciable controversy. Rather a plaintiff must allege or show that he has been or will be injured by some violation of his constitutional rights. As this Court put it recently in *O'Shea v. Littleton:*

> "Plaintiffs in the federal courts 'must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.' " 414 U.S. 488, 493 (1974).

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[11]Petitioners' confusion on this point is somewhat difficult to understand since the District Court explicitly stated that its order was not based on a determination that the Department's procedures were constitutionally defective, but that revision of those procedures was "a necessary first step in attempting to prevent future abuses." App. at 130a, 357 F. Supp. at 1321.

Where a plaintiff makes the necessary allegations of injury and then prevails on the merits by showing unconstitutional action on the defendants' part and resultant injury, the court is empowered under 42 U.S.C. §1983 to fashion appropriate relief. *Allee v. Medrano, supra; Schnell v. City of Chicago,* 407 F.2d 1084 (7th Cir. 1969); *Lankford v. Gelston,* 364 F.2d 197 (4th Cir. 1966). Such relief is awarded because it is designed to cure the demonstrated unconstitutional actions of the defendants, not because the relief itself is constitutionally required in the absence of proven unconstitutional conduct.

In the present case, the lower court found "that violations of legal and constitutional rights of citizens by the police [department] are . . . widespread . . . ." (App. at 124a, 357 F. Supp. at 1318). These findings were based upon fully 47 pages of specific discussion and findings relating to unlawful action by Department officers and injury to the respondents and the class they represent. (App. 73a-119a.) Accordingly, the lower court entered an injunction designed to remedy the constitutional violations it found and both its findings and the relief awarded were affirmed by the Court of Appeals.

There can thus be no doubt that respondents' initial allegations, and the findings of the courts below, show the presence of a justiciable controversy in the present case. Indeed, this is clear from a comparison of the present case with the authorities cited by petitioners.

For example, petitioners cite *Gilligan v. Morgan,* 413 U.S. 1 (1973), where this Court held nonjusticiable a suit brought by certain students of Kent State University seeking, as a result of one incident of alleged misconduct by the Ohio National Guard, an order setting standards for the training, kind of weapons, and scope and kind of

orders to control the actions of the National Guard. Not only did the case involve a request for broad relief based on an isolated incident, but it also involved the doctrine of separation of powers in that the regulation of the militia has been expressly entrusted by the Constitution to the Congress and by it, in part, to the Executive branch. In contrast, in the present case, no separation of powers question is involved (indeed, 42 U.S.C. §1983 is expressly aimed at controlling the conduct of State officials, such as petitioners) and the injunctive relief ordered below is based on a continuing pattern of conduct by the petitioners which has been and remains a substantial contributing cause of the violations of the constitutional rights of respondents and their class.

Petitioners' reliance on *O'Shea v. Littleton,* 414 U.S. 488 (1974), is equally misplaced. *O'Shea* involved the propriety of a complaint for injunctive relief against allegedly unconstitutional conduct by a State magistrate and a State judge. This Court held that the plaintiffs there failed to present a case or controversy in that there were insufficient allegations of continuing conduct which was likely to affect the plaintiffs, none of whom was "identified as himself having suffered any injury in the manner specified." 414 U.S. at 495. In the present case, however, the petitioners have not even contested the trial court's findings of continuing illegal conduct by the police which directly impacts on the respondents' class and inadequate control of that conduct by petitioners. The alternative ground of decision in *O'Shea* was simply an application of the rule established in *Younger v. Harris,* 401 U.S. 37 (1971), against federal court interference with State criminal prosecutions. Here, of course, no

such interference is present.[12] *Cf. Doran v. Salem Inn, Inc.*, 43 U.S.L.W. 5039 (June 30, 1975); *Steffel v. Thompson*, 415 U.S. 452 (1974).

In this case, of course, both unconstitutional conduct by the police and resulting injury to respondents have been found by the lower courts, and those findings are not even contested here. Accordingly, this Court's statement in *Laird v. Tatum*, 408 U.S. 1 (1972), with reference to judicial control of unconstitutional conduct by the military is of particular applicability to the unconstitutional police activity involved in this case:

> "[W]hen presented with claims of judicially cognizable injury resulting from military intrusion into the civilian sector, federal courts are fully empowered to consider claims of those asserting such injury; there is nothing in our Nation's history or in this Court's decided cases, including our holding today, that can properly be seen as giving any indication that actual or threatened injury by reason of unlawful activities of the military would go unnoticed or unremedied." 408 U.S. at 15-16.

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[12]Petitioners' reliance on *Hague v. CIO, supra*, is somewhat mysterious. Petitioners claim that this Court's refusal to permit a lower court to *save* a blatantly unconstitutional ordinance by rewriting it should be read as a determination that mandatory relief against city officials is generally improper. What petitioners ignore is that the relief ordered by this Court was more severe than that ordered by the lower court, namely, an injunction against enforcement of the ordinance altogether. In fact, *Hague* stands as strong support for the lower courts' decisions here in that it recognizes the propriety of equitable relief against unconstitutional conduct by city officials such as petitioners.

2. Respondents Have No Adequate Remedy at Law.

Petitioners claim that injunctive relief is inappropriate here because respondents have an adequate remedy at law. This contention is wholly without merit.

First, 42 U.S.C. §1983 specifically authorizes injunctive relief against unconstitutional official action and "where . . . there is a persistent pattern of police misconduct, injunctive relief is appropriate." *Allee v. Medrano, supra*, 416 U.S. at 815 (majority opinion), 838 (dissenting opinion); *Dombrowski v. Pfister*, 380 U.S. 479, 485-89 (1965); *Hague v. CIO, supra.* This, of course, is precisely such a case.

Second, suits for damages by those subjected to unconstitutional conduct by the police will not suffice to prevent recurrence of such misconduct. For instance, the offending police officers will generally be judgment proof and their superiors may have a partial immunity to damage suits though not to injunctive action. See *Wood v. Strickland*, 95 S. Ct. 992 (1975); *Scheuer v. Rhodes*, 416 U.S. 232 (1974). Moreover, as the District Court specifically found here, private damage suits are "inadequate" because they

> "are expensive, time-consuming, not readily available, and not notably successful . . . ." (App. at 126a, 357 F. Supp. at 1319.)

This conclusion by the District Court is in full agreement with the views of Chief Justice Burger:

> "The problems of both error and deliberate misconduct by law enforcement officials call for a workable remedy. Private damage actions against individual police officers concededly have not adequately met this requirement . . . ." *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 421 (1971).

In sum, respondents and other citizens of Philadelphia are entitled to an effective remedy against the sort of police misconduct shown here and, contrary to petitioners' contentions, a private action for damages is not such a remedy. As the lower courts have found here, only injunctive relief offers any hope of effectively protecting the constitutional rights of citizens from systematic police abuse.

3. The District Court Was Justified in Ordering the Department To Improve its Handling of Citizens' Complaints.

Petitioners next claim that the federal judiciary is wholly without power to order a municipal police department to establish adequate internal procedures for handling citizens' complaints about police misconduct because the determination as to the necessity for such procedures is "discretionary" and, therefore, the decisions of police officials on this isssue must be left to the judgment of the electorate. But petitioners wholly fail to recognize that the Fourteenth Amendment, and 42 U.S.C. §1983, were enacted for the specific purpose of limiting the power of elected or appointed officials to engage in unconstitutional treatment of citizens. The fact that a majority of voters in a city might possibly approve of the sort of police violations of the Constitution shown in this case does not make the evaluation of police conduct a political question or preclude an injunction which requires a police department to modify its existing citizen complaint procedure in order to end a pattern of unconstitutional conduct.

Moreover, contrary to the contentions of petitioners that a requirement that a police department establish some form of internal review and control of the conduct of its members is a novel and oppressive concept, it can

safely be stated that every professional evaluator of police affairs is in agreement that an adequate form of internal control is a necessity for a properly run police department. *See, e.g.*, Standard 5.4, and related commentary at pages 164-67, of the American Bar Association's *Standards Relating to the Urban Police Function* (1973), which were unanimously approved by the Executive Committee of the International Association of Chiefs of Police in December, 1972; National Advisory Commission on Criminal Justice Standards and Goals, *Report on Police, Model Standards for Police Internal Discipline*, Standards 19.1-19.6 (1973); The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, at 115-16 (1967), and *Task Force Report: The Police*, at 193-97 (1967); Note, *The Administration of Complaints by Civilians Against the Police*, 77 Harv. L. Rev. 499 (1964).

The reason for this general agreement is both straightforward and exemplified by the facts of this case. As the President's Commission on Law Enforcement and Administration of Justice has stated:

> "There is no profession whose members are more frequently tempted to misbehave, or provided with more opportunities to succumb to temptation, than law enforcement. The opportunities arise, on the whole, from the simple physical fact that policemen generally work alone or in pairs, out of sight of their colleagues and superiors." *The Challenge of Crime in a Free Society*, at 115.

In such a context, where the basic constitutional rights of citizens are at stake, it is particularly important that institutional restraints on official misconduct exist. When the absence of an adequate system of internal control can, as here, be shown to have contributed to an

excessive number of instances of unconstitutional police conduct, it is well within the power of a federal court to require that effective internal controls be instituted.

Indeed, in this connection it is most revealing to compare the injunction entered by the lower courts with that approved by this Court in *Allee v. Medrano, supra.* Thus, in *Allee* this Court approved an injunction which prohibited specific acts of misconduct in the carrying out of their duties by members of the Texas Rangers on the ground that such an injunction was necessary to protect the constititutional rights of the respondents in that case. This Court approved such an injunction even though, to some extent, the result was to make the Rangers subject to possible contempt proceedings for improper arrest and similar decisions in the field. Here, in contrast, the injunction requires only the promulgation and maintenance by high-ranking city officials of a system of internal police procedures for handling citizens' complaints.

It would appear self-evident that, as the lower courts concluded, an order instructing the Philadelphia Police Department to institute procedures aimed at increasing its ability to discipline its errant members is a far more innocuous interference with the Department's operations and command structure than any other type of order which could provide the relief the lower courts found necessary.[13]

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[13]Since the petitioners have consented to the entry of an injunction prohibiting the police from certain forms of misconduct in *Alexander v. Rizzo,* (E.D. Pa., C.A. No. 70-992), it is possible that they believe, as a matter of legal principle, that prohibitory injunctions are preferable to mandatory ones. But see *Developments in the Law—Injunctions,* 78 Harv. L. Rev. 994, 1061-63 (1965).

4. Petitioners' Objections to the Precise Form of the Trial Court's Decree Are Wholly Unsupported by Any Evidence of Record.

The petitioners devote six pages of their Brief (pages 29-35) to a litany of horrible consequences which they assert will follow from the trial court's judgment in this case. However, petitioners failed to make a single one of these objections to either the trial court or the Court of Appeals in this case, and there is no evidence at all in the record of this case to support any of these objections. Indeed, as the Brief for respondents shows in detail, many of the objections which petitioners now assert most vigorously relate to matters which are either existing practices of the Philadelphia Police Department or were suggested initially to the trial court by petitioners in the proposed form of order submitted by them. The impropriety of such arguments by petitioners in this Court should be readily apparent.

Petitioners are asking this Court to serve, in effect, as a trial court for the purpose of making factual determinations as to issues wholly outside the record. Such a role contemplates that this Court could appropriately reverse the decisions of the District Court and the Court of Appeals in this case on alleged "facts" not of record and on grounds never presented to either of those courts. This Court has invariably rejected such attempts to circumvent its appellate functions in the past. *E.g., Witherspoon v. Illinois,* 391 U.S. 510, 516-18 (1968), and *General Motors Corp. v. Washington,* 377 U.S. 436, 449 (1964) (Court will not reach claims unsupported by evidence in the record); *Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 147 n.2 (1970), and *United States v. Spector,* 343 U.S. 169, 172 (1952) (Court will not decide issues not raised below by petitioners). And it should do so again in this case.

Furthermore, petitioners have totally ignored paragraph 7 of the trial court's order (App. Pet. Cert. at 23a) which states "this Court reserves jurisdiction to modify this Order and the attached procedures and to grant such further relief as may be appropriate, upon the application of any party in interest." In the event that petitioners seriously believe any of the specific provisions of the order entered below would unduly interfere with the operations of the Philadelphia Police Department, they will be at liberty, after an affirmance by this Court, to seek a modification of those procedures from the District Judge in a proceeding in which their objections may be fully explored and appropriately resolved.[14]

Finally, petitioners' predictions of adverse consequences from the procedures established by the trial court's order are purely speculative and, in fact, contrary to the judgment of most professional police administrators. For example, in the *Model Standards for Police Internal Discipline* promulgated by the National Advisory Commission on Criminal Justice Standards and Goals, it is stated that "the chief executive of every police agency immediately should insure that the investigation of all complaints from the public, and all allegations of criminal conduct and serious internal misconduct, are conducted by a specialized individual or unit of the involved police

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[14] In this connection, the trial court has already recognized the need to minimize interference with the day-to-day operations of the Police Department.

> "[D]eference to the essential role of the police in our society does mandate that intrusion by the courts into this sensitive area should be limited, and should be directed toward insuring that the police themselves are encouraged to remedy the situation." App. at 127a, 357 F. Supp. at 1320.

agency." Standard 19.3. Similarly, Standard 19.5(3) provides that: "An administrative factfinding trial board should be available to all police agencies to assist in the adjudication phase." Indeed, as the authorities cited at page 17, *supra*, uniformly recognize, there is no serious disagreement among police professionals (other than petitioners) with the proposition that any properly run Police Department should have an effective internal mechanism, such as that required by the trial court's order in this case, for investigating and adjudicating claims of misconduct by police officers.

CONCLUSION

As the foregoing discussion demonstrates, the two lower courts found, on abundant evidence, that the petitioners herein are responsible for a continuing pattern of unconstitutional conduct by the Philadelphia Police Department. Taking careful consideration of the necessity for minimal interference with Police Department procedures, the lower courts entered an injunction which they found to be the least intrusive relief which could potentially remedy the violations found. The petitioners' legal arguments concerning the lower courts' asserted lack of power to order the Department to improve its

procedures for handling citizens' complaints of police misconduct are without merit and their objections to the specifics of the order are without foundation in the record. Accordingly, the lower courts' decisions should be affirmed by this Court.

Respectfully submitted,

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